

House Bill 60

By: Representative Powell of the 29th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, so as to provide for the burden of proof in hearings challenging a candidate's qualifications based upon residency; to provide for an award of costs and attorneys' fees for frivolous or harassing candidate qualification challenges; to provide for certain rebuttable presumptions concerning residency; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and primaries generally, is amended by adding new subsections (b.1) and (f) to Code Section 21-2-5, relating to the determinations of qualifications of candidates for federal and state office, to read as follows:

"(b.1) If a challenge to a candidate's qualifications is based upon whether the candidate meets the residency requirements to seek the office for which such candidate is offering for nomination or election, the burden of proof at the hearing shall be on such candidate to demonstrate that he or she meets the residency requirements to seek such office."

"(f) If the Secretary of State finds that the challenge filed by an elector under this Code section was frivolous, was totally without a legal or factual basis, or was brought solely for the purpose of harassment of the candidate, the Secretary of State may award costs and reasonable attorneys' fees in defending such challenge to the candidate and against the elector."

SECTION 2.

Said chapter is further amended by adding new subsections (b.1) and (f) to Code Section 21-2-6, relating to the determinations of qualifications of candidates for county and municipal office, to read as follows:

"(b.1) If a challenge to a candidate's qualifications is based upon whether the candidate meets the residency requirements to seek the office for which such candidate is offering for nomination or election, the burden of proof at the hearing shall be on such candidate to demonstrate that he or she meets the residency requirements to seek such office."

“(f) If the superintendent finds that the challenge filed by an elector under this Code section was frivolous, was totally without a legal or factual basis, or was brought solely for the purpose of harassment of the candidate, the superintendent may award costs and reasonable attorneys’ fees in defending such challenge to the candidate and against the elector.”

SECTION 3.

Said chapter is further amended by adding a new subsection (c) to Code Section 21-2-217, relating to rules for determining residency, to read as follows:

“(c) In hearings to determine a challenge to the qualifications of a candidate based upon residency, the following presumptions shall apply, but may be rebutted by a preponderance of the evidence adduced at a hearing on such challenge:

(1) The residence of a candidate shall be presumed not to be in buildings or structures which are used primarily for commercial or business purposes;

(2) The residence of a candidate shall be presumed not to be in any vehicle, motor home, camper, or other vehicle, trailer, or other conveyance which is readily moveable and is not permanently affixed to the property on which it is located;

(3) The residence of a candidate shall be presumed not to be on any property on which there is no permanent dwelling structure;

(4) In the case of a candidate who moves his or her place of residency from a location outside the district from which such candidate desires to be elected to a residence located within such district within the 60 day period prior to the date on which such candidate must be a resident of the district in order to qualify to seek such office or within 60 days prior to qualifying to seek the office, the residence of a candidate for purposes of seeking elective office shall be presumed to remain at the site of the candidate's previous residence;

(5) The residence of a candidate shall be presumed to be at the dwelling place where such candidate resides a majority of his or her nonworking hours;

(6) The residence of a candidate shall be presumed to be at the dwelling place where such candidate spends a majority of his or her nights; and

(7) The residence of a candidate shall be presumed to be the same as that of his or her spouse."

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